

From the:

INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:

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PCT

WRITTEN OPINION OF THE INTERNATIONAL
PRELIMINARY EXAMINING AUTHORITY
(PCT Rule 66)

Date of mailing
(day/month/year)

23 MAR 2005

Applicant's or agent's file reference

FP19468

REPLY DUE

within **TWO MONTHS**
from the above date of mailing

International application No.

PCT/AU2004/000505

International filing date (day/month/year)

16 April 2004

Priority date (day/month/year)

17 April 2003

International Patent Classification (IPC) or both national classification and IPC

Int. Cl. ⁷ G01B 11/02, G01N 9/00

Applicant

COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION et al

1. ☒ The written opinion established by the International Searching Authority:☒ is☐ is not

considered to be a written opinion of the International Preliminary Examining Authority.

2. This **second** (second, etc.) opinion contains indications relating to the following items:

Box No. I

Basis of the opinion



Box No. II

Priority



Box No. III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability



Box No. IV

Lack of unity of invention



Box No. V

Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement



Box No. VI

Certain documents cited



Box No. VII

Certain defects in the international application



Box No. VIII

Certain observations on the international application

The applicant is hereby invited to reply to this opinion.

When?

See the **Reply Due** date indicated above. However, the Australian Patent Office will not establish the Report before the earlier of (i) a response being filed, or (ii) one month before the **Final Date** by which the international preliminary examination report must be established. The Report will take into account any response (including amendments) filed before the Report is established. If no response is filed by 1 month before the **Final Date**, the international preliminary examination report will be established on the basis of this opinion.

Applicants wishing to have the benefit of a further opinion (if needed) before the report is established should ensure that a response is filed at least 3 months before the **Final Date** by which the international preliminary examination report must be established.

How?

By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also

For an additional opportunity to submit amendments, see Rule 66.4.

For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4bis.

For an informal communication with the examiner, see Rule 66.6.

4. The **FINAL DATE** by which the international preliminary report on patentability (Chapter II of the PCT) must be established according to Rule 69.2 is: 17 August 2005

Name and mailing address of the IPEA/AU

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WRITTEN OPINION OF THE
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International application No.

PCT/AU2004/000505

Box No. I **Basis of the opinion**

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This opinion is based on a translation from the original language into the following language ,
which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1 (b))
- ☐ publication of the international application (under Rule 12.4)
- ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the elements of the international application, this opinion has been established on the basis of *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed.")*:
- ☐ the international application as originally filed/furnished
- ☒ the description: pages 1 – 21, as originally filed/furnished
pages , received by this Authority on with the letter of
pages , received by this Authority on with the letter of
- ☒ the claims: pages , as originally filed/furnished
pages 31 – 40, as amended (together with any statement) under Article 19,
pages , received by this Authority on with the letter of
pages , received by this Authority on with the letter of
- ☒ the drawings: pages 1/7 – 7/7, as originally filed/furnished
pages , received by this Authority on with the letter of
pages , received by this Authority on with the letter of
- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to the sequence listing (*specify*):
4. ☒ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
- ☒ the claims, Nos. 2 - 13, 32 & 33
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to the sequence listing (*specify*):

WRITTEN OPINION OF THE
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Box No. V **Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Claims 1, 14 - 31, 34 - 54	YES
	Claims	NO
Inventive step (IS)	Claims 14 - 17, 21 - 29, 36 - 47, 52 - 54	YES
	Claims 1, 18 - 20, 30, 31, 34, 35, 48 - 51	NO
Industrial applicability (IA)	Claims 1, 14 - 31, 34 - 54	YES
	Claims	NO

Citations and explanations:

The following documents identified in the International Search Report have been considered as relevant for the purposes of this report:

D1: US 2002/0117274

D2: FR 2512196

D3: US 6 407 819

Novelty (N)

Claims 1, 14 - 31 & 34 - 54 meet the criteria set forth in PCT Article 33(2) for novelty. The prior art published before the priority date does not disclose a method or apparatus for measuring fibre fineness in which an image of a plurality of fibres is captured, the total length of the fibres in the image is measured using image analysis and the fineness of the sample is calculated based on the measured length.

Inventive Step (IS) (claims 1, 18 - 20, 30, 31, 34, 35, 48 - 51)

Independent claims 1 & 30 lack inventive step in light of a combination of either D1 & D2 or D1 & D3. Such a combination of documents is considered to be obvious to the person skilled in the art in light of the direct reference to optical instruments which measure fibre length at paragraph [0003] of D1.

D1 discloses a method of measuring fibre coarseness (defined to be mass per unit length of a fibre and hence equivalent to fineness as defined in the current application) in which fibre length measurements of a known mass of fibres is used to calculate the coarseness (fineness).

Both D2 and D3 disclose devices which measure fibre length by recording an image of a fibre and using image analysis tools to calculate the length of the fibre.

Furthermore, the features of dependent claims 18 - 20, 31, 34, 35 & 48 - 51 are disclosed in one or both of D1 & D2, or are considered to be features that would be obvious to the person skilled in the art.

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Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

Continuation of: Box I, Item 4

Claims 2 – 13, 32 & 33 are considered to contain matter which goes beyond the disclosure as filed.

Claim 2 defines a specific step in the method relating to the calculation of the total length of fibres in the *sample*. However, the description as filed is silent as to this step in the method. While the original disclosure does include an equation (equation 6) which can be interpreted in the manner claimed in claim 2, this can only be considered an implicit disclosure. The PCT International Search and Preliminary Examination Guidelines preclude the inclusion of new matter if the overall change in the content of the application results in the skilled person being presented with information, which was not expressly or inherently presented in the application as filed even when taking into account matter which is implicit to a person skilled in the art.

Claims 3 – 13 are directly dependent on claim 2 and are therefore not allowable for the same reasons.

Claim 6 also includes the option of an analogue camera as the image capturing device. However, the original disclosure clearly limits the image capturing device to "a digital camera or a like recording device". Considering the computer image processing aspect of the invention, it is considered that the "like recording device" must be one which produces a digital image.

Claim 32 includes features relating to the calculation of the total length of fibres in the sample, and is not allowable for the reason stated above in relation to claim 2.

Claim 33 is directly dependent on claim 32 and is therefore not allowable for the same reasons.

Note that claims 14 – 29 & 34 – 54 are allowable insofar as they include the option of being appended directly to either claim 1 or claim 30 without including the new matter of claims 2 or 32.